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Why The FBI Can't Be Reformed

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Of all the failures that allowed al Qaeda's attacks on Sept. 11, 2001, to succeed, those of the FBI are the most egregious. Yet none of the commissions or congressional committees investigating them has proposed more than platitudes about the FBI's reforming itself. Blistering criticism has been abundant, but not a single serious remedy has been demanded.

Meanwhile, evidence of the FBI's inability to reform continues to pile up. It has botched its expensive programs for acquiring state-of-the-art information technology systems. Its intelligence personnel still take a back seat to its crime-fighters. The FBI's expanded role abroad has been more disruptive than productive: Populating legal attaché offices in U.S. embassies, usually with G-men, the bureau creates tensions with CIA stations and displays its incompetence to foreign counterpart agencies.

A few members of the commission on weapons of mass destruction belatedly seemed to realize that leaving counterintelligence responsibility within the FBI was not a good idea. But they would still leave it in the Justice Department, even if it were taken out of the FBI. That would be a fatal mistake. It cannot be effective there.

The problem is systemic. No one can turn a law enforcement agency into an effective intelligence agency. Police work and intelligence work don't mix. The skills and organizational incentives for each are antithetical. One might just as well expect baseball's Washington Nationals to win football's Super Bowl as believe the FBI can become competent at intelligence work.

Consider the different organizational incentives. FBI officials want arrests and convictions. They want media attention and lots of it. FBI operatives want to make arrests, to "put the cuffs on" wrongdoers. They have little patience for sustained surveillance of a suspect to gain more intelligence. They prefer to gamble on an early arrest and an intimidating interrogation that might gain a confession. To them, sharing intelligence is anathema. Intelligence is something to be used, not shared. Getting the credit is far more important than catching the spy or the terrorist.

Intelligence officials do not want public attention. They want to remain anonymous. They do not need arrest authority. They want to follow spies and terrorists secretly, allowing them to reveal their co-conspirators. Their reward comes from providing intelligence to others, not hiding it. They are quite happy to let the FBI make the arrests and take the credit.

There is, of course, an overlap between the two cultures: Gathering sufficient evidence to make an arrest and prove guilt is common to both. But counterintelligence agents tend to be more thorough, taking their time to develop evidence both for trials and for operational use. They know that they cannot let spies or terrorists get away without risking considerable danger to the country. Cops worry much less that a criminal will get away. Criminals are abundant and there are plenty more to arrest.

Spies and terrorists will almost always defeat police officers. Spies and terrorists are normally backed

by large state bureaucracies or non-state organizations with abundant resources and worldwide operational support. Criminals seldom are. Thus FBI techniques of recruiting "stoolies," tapping phones and conducting rough interrogations often work with mobsters but not with spies and terrorists.

In fact, if one looks closely at the FBI's record vis-a-vis Soviet intelligence operatives throughout J. Edgar Hoover's reign, it is saturated with disgraceful failures. The famous Venona file of decryptions of Soviet agents' communications during the 1940s yielded more than 200 names of U.S. citizens. Of those, the FBI was able (or willing) to follow and gain adequate evidence to support the conviction of only two: Julius and Ethel Rosenberg. Scores of others duped the FBI completely.

The only hope for improvement is the creation of a separate agency, equal to the CIA and under the new director of national intelligence. Sometimes called the "MI-5 solution," after the British example, it has been dismissed by members of Congress who say that the American public will not tolerate a "domestic spy agency." This is simply untrue. They have tolerated such an agency for decades -- the FBI -- and it is not known for respecting Americans' civil rights.

Congress celebrated passing the new intelligence reform law, pretending that it will "fix" the Sept. 11 problems. It will not. At the same time, Congress refused to do the single thing that could fix them: create a national counterintelligence service.

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